HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 171/2003
(Old No. 345 of 1986)

Bhullan and Smt. Mangla ……Revisionists

Vs.

State of U.P. …….Respondent

Hon'ble Irshad Hussain, J.

None appear for the revisionist. Heard Sri H.C.Pandey learned A.G.A. for the State and perused the record.

This criminal revision under section 397/401 of the Code of Criminal Procedure (for short 'Code') has been preferred against the judgment and order dated 19.2.1986 passed by the Sessions Judge, Saharanpur in criminal appeal no. 115/1985, whereby the conviction and sentence as recorded by the learned Magistrate in criminal case no. 792/1983 per judgment and order dated 16.4.1985 was affirmed. The learned Magistrate had convicted the revisionists under section 60 of the Excise Act and the revisionist no. 1-Bhullan was sentenced to undergo RI for six months and whereas the revisionist no.2-Smt. Mangla was released on probation on good conduct on furnishing the required bonds.

The prosecution case was that on an information form the informant the house of the revisionists was raided on 14.7.1979 and bottles, drum & patili with illicit liquor were seized from their possession. In the trial prosecution examined Sub-Inspector (PW1) who proved the prosecution case and recovery effected from the possession of the revisionists. The revisionists have had no license to possess the liquor. The witnesses also proved the memo of recovery and seizure, Ex.Ka.1. His evidence was corroborated by the police constable who was also the member of the police party which raided the house of the revisionists. There was thus sufficient evidence to prove the allegation of the prosecution and to prove the charge leveled against them. On appeal being preferred the learned Sessions Judge, Saharanpur also appraised the evidence of the prosecution and rejected the contention of the revisionists-appellant that there was no sufficient evidence to bring home guilt to them. There being concurrent finding of guilt on the basis of the sufficient evidence, I find no perversity in the appreciation of the same and therefore the revision being devoid of merit on the point of

conviction, the conviction under section 60 of the Excise Act is to be maintained.

So far as the quantum of sentence is concerned, the revisionist no.2 was given the benefit of the provision of the First Offenders Act and was released on probation for the stipulated period to keep peace and be of good character. Her husband-Bhullan was, however, sentenced to undergo RI for six months and it is evident that he remained in custody after the appeal was dismissed and till he came to be released after the revision was field and his bail was granted. Considering the fact that the incident took place wayback in the year 1979, it will be just and proper to reduce the sentence of imprisonment to the period of already undergone and further to sentence the revisionist with suitable fine. Considering the quantity of the illicit liquor found from the possession of the revisionists, sentence of fine of Rs. 500/- (Rupees five hundred only) shall meet the ends of justice.

In view of above, the revision is disposed of by maintaining conviction of the revisionists under section 60 of the Excise Act However, the sentence of imprisonment against the revisionist no.1 is modified to the period of sentence already undergone and further to pay fine of Rs. 500/- (Rupees five hundred only). In default of payment of fine he will undergo RI for three months.

Let the record be sent back to the sessions Judge, Sharanpur for necessary action and compliance and the report to be submitted within two months.

(Irshad Hussain, J.)

Date 23.4.2004
Rawat